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Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 CHEVRON CORPORATION,

4 Plaintiff,

5 v.

11 CV 691 (LAK)

6 STEVEN DONZIGER, ET AL.,

7 Defendants.

8 -----x

9 April 17, 2013
10 9:30 a.m.

11 Before:

12 HON. LEWIS A. KAPLAN,

13 District Judge

14 APPEARANCES

15 GIBSON DUNN & CRUTCHER

Attorneys for Plaintiff Chevron

16 BY: RANDY M. MASTRO

ANDREA E. NEUMAN

JASON B. STAVERS

17 ANNE MARIE CHAMPION

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18 RACHAEL BROOK

19 SMYSER KAPLAN & VESELKA, LLP

Attorneys for Defendants Camacho & Piaguaje

20 BY: LARRY R. VESELKA

CRAIG SMYSER

21 JAROD STEWART

- and -

22 JULIO C. GOMEZ

23 KEKER & VAN NEST, LLP

Attorneys for Defendant Donziger

24 BY: JOHN W. KEKER

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1 (Trial resumes)

2 (In open court)

3 THE COURT: Good morning, everyone. Let's resume.

4 MR. KEKER: Your Honor, before we begin, could I raise
5 two matters that I hope will be brief, if I can?

6 THE COURT: Proceed.

7 MR. KEKER: The first deals with a document that you
8 ordered yesterday to be turned over forthwith, and I have it
9 here. What I am asking is for you to look at it and redact it
10 as follows:

11 Basically everything in it is work product that is not
12 relevant to this hearing except the conclusion. We don't have
13 any problem with the conclusion, the from-to and the conclusion
14 being given to our adversaries, but we do object strenuously.
15 This is very much case planning strategy and so on, and I'd ask
16 you to look at it before we have to turn it over.

17 THE COURT: Mr. Mastro.

18 MR. MASTRO: Your Honor, I have no problem with your
19 Honor doing it in-camera, review of the document. It is a
20 little hard for me to address the point other than to say I
21 think there has been a waiver on this subject matter given the
22 testimony that was given. It is hard to imagine how just the
23 conclusion of the document that explains the rationale would
24 not have been waived even if it were work product and we have a
25 need for it under these circumstances.

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1 THE COURT: I'll look at it.

2 MR. KEKER: May I hand it up, your Honor?

3 THE COURT: Yes.

4 MR. KEKER: This is being handed up for examination
5 in-camera. Thank you.

6 To identify it for the record, it begins -- and I
7 should say a couple of other things. The first page is a memo
8 from --

9 THE COURT: Mr. Keker, you asked me to look at it. I
10 am happy to look at it. We don't need any further discussion.

11 MR. KEKER: The second matter, your Honor --

12 THE COURT: Did you want me to look at it?

13 MR. KEKER: Look at it now? I am sorry. I beg your
14 pardon.

15 (Pause)

16 MR. KEKER: Your Honor, I should add the English
17 translation in the back is is not an official translation. It
18 was done by somebody I think in Mr. Smyser's office.

19 (Pause)

20 THE COURT: What you propose to eliminate is
21 everything but the last --

22 MR. KEKER: The conclusion, the from-to in the
23 beginning and then give them the conclusion where it says the
24 three points that are the conclusion, that is the only thing
25 that goes to the subject matter that he talked about which is

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1 his duties.

2 THE COURT: We'll take this up in more detail later.

3 MR. KEKER: Your Honor, the second matter, again very
4 briefly, is what we raised yesterday. We have due today a
5 response to that crime fraud discovery motion. We ask you
6 please to treat it on a different schedule as a regular motion
7 is what we prefer.

8 THE COURT: Mr. Keker, as I said yesterday, file your
9 response today. If you think you need more time, you will
10 explain why in the response and I may or I may not grant it.

11 MR. KEKER: Okay. People who aren't even at this
12 hearing are going to have to do it and don't know anything
13 about what is going on. We can't do that today. I can't do
14 that.

15 THE COURT: Mr. Keker, Mr. Werdegarr has actually
16 handled before me other court appearances of significant moment
17 on behalf of your client, and you have plenty of resources.

18 MR. KEKER: That is not true, your Honor, but I
19 understand what you're saying. Okay, thank you.

20 THE COURT: Okay. Mr. Stewart, resume the stand. I
21 think you're still under examination. You're still under oath.

22 JAROD STEWART, resumes

23 JAROD STEWART,

24 called as a witness by the Plaintiff,

25 having been duly sworn, continued testifying as follows:

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1 DIRECT EXAMINATION

2 BY MS. NEUMAN:

3 Q. Good morning, Mr. Stewart.

4 A. Good morning.

5 Q. In the October 4th conversation between yourself, Mr.
6 Smyser, Mr. Veselka and Mr. Fajardo, did you specifically
7 discuss Mr. Camacho and Mr. Piaguaje filing an action in
8 Ecuador seeking access to their documents?

9 A. We did not.

10 Q. In that same conversation did you specifically discuss the
11 Lago Agrio plaintiff seeking to preclude Mr. Fajardo from
12 giving Mr. Camacho, Mr. Piaguaje access to Ecuadorian counsel's
13 files?

14 A. We did not.

15 Q. Now, after the October 4th conversation you promptly
16 followed up with Mr. Fajardo by e-mail, correct?

17 A. I did not follow with Mr. Fajardo.

18 Q. You indicate in your declaration that on October 9th
19 Mr. Fajardo responded -- on October 9th, in response to an
20 e-mail I sent about Mr. Smyser's suggestion to have an
21 Ecuadorian court decide disputed issues of Ecuadorian law,
22 Mr. Fajardo told me he would keep me informed.

23 Do you recall that?

24 A. Yes. I did not initiate the e-mail response on October
25 9th. Mr. Fajardo did.

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Stewart - direct

1 Q. In your declaration you say, "On October 9th, in response
2 to an e-mail I sent." Is that not accurate?

3 A. That is true. Mr. Fajardo sent me an e-mail. I respond,
4 and he responds saying he would keep me informed.

5 Q. So on October 9th three e-mails were exchanged on this
6 topic between yourself and Mr. Fajardo. Is that right?

7 A. That's correct.

8 MS. NEUMAN: We ask those e-mails be produced.

9 THE COURT: That's the subject of this motion pending,
10 right?

11 MS. NEUMAN: Yes, your Honor.

12 THE COURT: Well, I will deal with that after I see
13 what Mr. Keker files tonight.

14 BY MS. NEUMAN:

15 Q. The first e-mail you received from Mr. Fajardo on October
16 9th, what did that e-mail say?

17 MR. SMYSER: Objection; work product, attorney-client
18 privilege.

19 THE COURT: Why shouldn't I rule right now that
20 whatever privilege there otherwise might have been is waived
21 because you're relying on these communications as evidence of
22 your good faith under Bilzarian, the case I am referring to,
23 among others, and simply have these turned over?

24 MR. SMYSER: Your Honor --

25 THE COURT: It is you, after all, you personally who

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Stewart - direct

1 asserted in a letter to me that this whole idea of the Cordova
2 action was yours, and then it was in your firm's submissions --
3 specifically Mr. Stewart's declaration at least in part -- that
4 then proceeds to attempt to develop the argument that of course
5 you're in good faith. You know, this was really a perfectly
6 normal thing to do, this exchange between you and Fajardo about
7 doing this really rather remarkable thing that you folks did in
8 Ecuador.

9 Now, why wasn't that a waiver under various
10 established principles?

11 MR. SMYSER: As I have said previously, your Honor, we
12 did not choose to make that response. We were forced to make
13 that response by being accused of bad faith. If we are accused
14 of bad faith, it cannot be the law --

15 THE COURT: The law, Mr. Smyser, the law on a question
16 of sanctions for failure to comply with an order to produce
17 documents where there is a blocking statute or other conflict
18 with foreign law alleged is that the burden of demonstrating
19 good faith is on the non-compliant party, which is you. In an
20 effort to carry that burden, you are asserting here and bear
21 the burden of proving that you have good faith.

22 You place before me your own account of how this
23 happened and Mr. Stewart's account of how this happened, and
24 you say oh, no, but it's privileged, you can't look at the
25 documents, Chevron can't look at them and neither can the

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Stewart - direct

1 Judge. How can you possibly take that position?

2 MR. SMYSER: Your Honor, I can take that position
3 because I believe the law does not permit a party to accuse
4 someone of bad faith and then not allow that party to respond
5 without waiving privilege. Your Honor, I have no choice but --

6 THE COURT: Mr. Smyser, where was the accusation
7 exactly?

8 MR. SMYSER: The accusation was in the motion to
9 compel which says we engaged in bad faith. How can I respond
10 to that, your Honor?

11 How can I say I didn't act in bad faith other than a
12 conclusory way without relying on facts to demonstrate to the
13 court, as an officer of the court, what actions I took to
14 comply with the discovery requirements I have under the rules?
15 I had to do that.

16 THE COURT: And your position is you're going to tell
17 me that which it suits you to tell me including the existence
18 of communications you claim are privileged and parts of them,
19 those parts that you want to reveal.

20 That is your position?

21 MR. SMYSER: No, your Honor, my position is not quite
22 that. One, the court always has the right to examine my
23 documents in-camera, the documents --

24 THE COURT: That is not what we are talking about, you
25 understand that?

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Stewart - direct

1 MR. SMYSER: I understood you to say you are not going
2 to let me see. I was saying no, I was going to let the court
3 see them.

4 THE COURT: Fair enough, you sure understood what I
5 meant by that is you're not going to allow it to be part of the
6 record in this case.

7 MR. SMYSER: Yes, your Honor, it should not be part of
8 the record in this case other than to have the court examine
9 them and determine whether they are privileged, but I have no
10 choice. I can't be put in a Hobson's position of saying I
11 can't defend myself, all I can do is get on the stand and say
12 everything is privileged, I acted in good faith, in which case
13 the court would be empowered to say, Mr. Smyser, you have
14 offered no declaration, you have offered no proof, I can't take
15 your unsupported sworn -- as this Court has said before, I
16 can't take your unsupported, unsworn, un-factually verified
17 conclusions as proof.

18 So I have to respond to the degree I can without
19 totally waiving the privilege.

20 THE COURT: Right here in Mr. Stewart's affidavit he
21 says on October 9, 2012, in response to an e-mail I sent about
22 Mr. Smyser's suggestion to have an Ecuadorian court decide a
23 disputed issue of Ecuadorian law, Mr. Fajardo told me he would
24 keep me informed.

25 So he wants me to believe, you want me to believe that

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Stewart - direct

1 he sent such an e-mail. You don't want to produce the e-mail.
2 You want me to accept that it was sent and that's evidence of
3 good faith, but suppose the e-mail said remember Mr. Smyser's
4 suggestion that you go to the Ecuadorian court without notice
5 to Chevron or the court in New York for the purpose of seeing
6 whether you can get an order that would thwart the discovery
7 process in New York because this is the best way we have left
8 to us to shut down what Chevron is attempting to do up there.

9 Now, it might say that, right?

10 MR. SMYSER: It might.

11 THE COURT: And certainly you don't want me to accept
12 that it says that without it being produced, right?

13 MR. SMYSER: Yes, your Honor. Actually, I believe my
14 duty as an officer of the court runs to the court to do what I
15 am supposed to do under the rules to respond to discovery. If
16 the court would like to see these e-mails to confirm I am being
17 honest as an officer of the court about what say they, I have
18 no problem with that.

19 THE COURT: The critical point, sir, is that you are
20 telling us what they say, and by doing that you are disclosing
21 and attempting to use them while at the same time concealing
22 the documents that say the things, if I don't have reason to
23 question it, say the things you say they say.

24 MR. SMYSER: Yes, your Honor, I have to. I don't have
25 a choice. When someone takes the extraordinary -- I never had

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Stewart - direct

1 this happen to me in my career, your Honor, a man accusing me
2 of bad faith in responding to discovery. This has never
3 happened. I don't have any choice but to offer facts, that
4 limited disclosure of facts I came to rebut those claims. It
5 is not something that I want to do. I am not doing it
6 voluntarily. I am forced to do this.

7 THE COURT: Let me hear briefly from Mr. Mastro and I
8 will decide whether I will rule on it right now or wait till
9 this evening.

10 MR. MASTRO: Certainly, your Honor.

11 We actually made a discrete motion on waiver grounds
12 just on this October 9th exchange for the reasons --

13 THE COURT: I know you did.

14 MR. MASTRO: Just to clarify for the record, we moved
15 to compel. We moved to compel months earlier. That was not --
16 there was no accusation there other than that they should have
17 to produce the documents from Ecuador because they were their
18 agents.

19 We had a hearing on March 5th. I hadn't moved for
20 sanctions yet. I did say to the court that we wanted to in the
21 future move for sanctions, but I hadn't even moved for
22 sanctions yet. He chose to write to the court after that
23 hearing, and I had sent a letter to the court about certain
24 things I thought had been misrepresented and Mr. Donziger is a
25 pariah.

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Stewart - direct

1 He chose to respond before we made a sanctions motion
2 with his explanation and his admission that he had suggested
3 it, and he starts to lay out his story about that collusive
4 Ecuadorian suit. He can't very well say that I already made
5 specific accusations in that regard because my sanctions motion
6 hadn't even been filed.

7 Finally, your Honor, he has chosen to come forward
8 with the information he has come forward with. These documents
9 happen at a critical period. It happens on October 9th when
10 your Honor has the documents, these exchanges, when your Honor
11 ordered a scheduling hearing. They're trying to find out what
12 the status of that Ecuadorian suit is in advance of your
13 Honor's October 18th scheduling hearing. That is why this
14 exchange is occurring. These documents are so clearly
15 relevant, they open the door through Stewart's affidavit, but
16 even before that, through Smyser's letter.

17 It is waived. We have a right to see that. This is
18 not about them being forced to do something. He chose to speak
19 up and tell his version of events before we even moved for
20 sanctions. So I think this isn't a close case under the law,
21 your Honor, and I think it is not a close case on the facts.

22 THE COURT: I will think about it a little further.
23 Let's go on with the testimony.

24 BY MS. NEUMAN:

25 Q. Mr. Stewart, did Mr. Fajardo tell you on October 9th that

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Stewart - direct

1 he would be filing a lawsuit in Ecuador?

2 A. No.

3 Q. But Mr. Fajardo did on October 9th say he would keep you
4 informed about his progress on implementing Mr. Smyser's
5 suggestion an action be brought in Ecuador, correct?

6 A. No. He simply said he would keep me informed.

7 Q. Keep you informed about what?

8 A. He didn't indicate anything --

9 THE COURT: Were there any other subjects discussed in
10 your conversation or in the e-mail exchange?

11 THE WITNESS: I don't believe so.

12 BY MS. NEUMAN:

13 Q. On October 22nd, Mr. Stewart, Mr. Fajardo told you that an
14 action had been filed in Ecuador, correct?

15 A. He indicated that a case was proceeding in Ecuador.

16 Q. What did he say exactly?

17 A. The case is proceeding.

18 Q. What case?

19 A. He didn't say.

20 Q. When he told you that the case was proceeding in Ecuador,
21 you understood him to be referring to the lawsuit that Mr.
22 Smyser had suggested be brought, correct?

23 A. I understood him to be referring to some action to resolve
24 the disputed question of Ecuadorian law.

25 Q. About the documents?

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Stewart - direct

1 A. Yes.

2 Q. Was this the first time that you are aware the Cordova
3 action had been filed?

4 A. The first time I became aware of the Cordova action was on
5 January 15th.

6 Q. But the lawsuit that was, Mr. Fajardo told you was filed in
7 October is the Cordova action, right, they're one and the same?

8 A. I learned that on January 15th a lawsuit was called the
9 Cordova lawsuit. I did not know the proceedings, who the
10 parties were, where it was filed, what relief was sought in
11 October 2012, ma'am.

12 Q. Did Mr. Fajardo tell you at any time before the Cordova
13 lawsuit was filed he had decided to produce documents to
14 Chevron?

15 A. Before October 18th, Mr. Fajardo did not say that to me.

16 Q. Mr. Fajardo told you on October 22nd that a case had been
17 filed because that was important information for you to know,
18 correct?

19 A. He told me that a case was proceeding, and I took from that
20 a case had been filed before October 22nd. I did not know when
21 it had been filed or where.

22 Q. Fajardo gave you that information because he understood
23 that information to be important to you. Is that right?

24 A. I don't know what Mr. Fajardo understands.

25 Q. You're diligent in representing your clients, sir?

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Stewart - direct

1 A. I do my best.

2 Q. After Mr. Fajardo told you a case was proceeding related to
3 your client's access to the Ecuadorian lawyer's files in
4 Ecuador, did you follow up diligently with Mr. Fajardo what was
5 happening in that case?

6 A. I asked Mr. Fajardo for information, and Mr. Fajardo
7 provided the information he wanted to.

8 Q. On how many occasions between October 22nd and January 1st
9 did you ask Mr. Fajardo for information about the case that was
10 proceeding in Ecuador?

11 A. Two or three times.

12 Q. Were those requests made in writing or on the phone?

13 A. I believe one may have been in writing and the other is on
14 the phone.

15 Q. When you asked Mr. Fajardo in writing about the case that
16 was proceeding in Ecuador related to the document production
17 issue, what did he tell you?

18 MR. SMYSER: Your Honor, the same objection, work
19 product, attorney-client privilege, directly asking what
20 Mr. Fajardo told him and what he told Mr. Fajardo.

21 THE COURT: I tell you what, we are going to interrupt
22 the examination of this witness and we are going to resume it
23 tomorrow because this is a pointless exercise, and I will
24 consider whatever you file tonight and you better have all
25 these documents here in case I rule that they're going to be

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Stewart - direct

1 produced.

2 MR. SMYSER: Yes, your Honor, we have, I believe, the
3 majority of the documents here now.

4 THE COURT: Well, you get the totality of them here.

5 MR. SMYSER: We will exercise every effort we can to
6 get every document here, your Honor.

7 THE COURT: Furthermore, I want to you to submit them
8 to my Chambers at least for in-camera inspection by 4:30.

9 MR. SMYSER: I don't know that I can have all the
10 documents. The documents I have with me, I will have to take
11 time from the court to go get them presented to submit.

12 THE COURT: There will be a lunch break and,
13 furthermore, you have an office in Texas that can fax you
14 whatever you didn't bring with you.

15 MR. SMYSER: Yes, your Honor, I will have to be
16 excused to call my office to make this happen.

17 THE COURT: You may.

18 THE WITNESS: May I step down?

19 THE COURT: Yes.

20 MR. SMYSER: May I have a fax destination, phone
21 number? I am in a hotel and I will have to go back and get
22 them in a hotel.

23 THE COURT: Well, then you just have to do that at the
24 end of the day. I want these documents turned over from you to
25 me, to my Chambers. I don't want them going into any fax

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Stewart - direct

1 machine somewhere.

2 MR. SMYSER: May I fax them to you, your Honor, your
3 Chambers?

4 THE COURT: No.

5 MR. SMYSER: E-mail them to your Chambers? We can get
6 them e-mailed or put them on e-mail for the court?

7 THE COURT: In this one instance only you may e-mail
8 them to my Deputy.

9 MR. SMYSER: Thank you.

10 MR. MASTRO: Your Honor, it had been our intention to
11 call Mr. Smyser today as well, but obviously --

12 THE COURT: He is not excused for the day. You want a
13 delay on it; is that right?

14 MR. MASTRO: No. We'll call our other witnesses. He
15 would be called tomorrow as well when Mr. Stewart comes back on
16 the stand. It is the same documents to examine him on.

17 THE COURT: Then in light of that, unless we fill the
18 whole day today, we'll go from about 9:30 to 1:00 or maybe a
19 little later tomorrow and resume around 3:30 tomorrow.

20 MR. MASTRO: Fine, your Honor. We are going to do
21 everything we can to finish the hearing, all our witnesses
22 today besides Mr. Stewart and Mr. Smyser and then finish them
23 tomorrow.

24 THE COURT: What is it, Mr. Keker?

25 MR. KEKER: Why don't you have Mr. Smyser give

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Stewart - direct

1 whatever testimony they want from him. If you end up
2 disclosing the documents, you can call back whoever. Why don't
3 we get this thing done rather than have it -- I understand your
4 frustration with the Mr. Stewart part, but if they have
5 questions for Mr. Smyser, let them ask the questions. Then if
6 there are documents he need to be recalled about, do it.

7 THE COURT: That is a good suggestion. Do you want to
8 proceed that way?

9 MR. MASTRO: Your Honor, that is fine by me. The key
10 examination is in this sequence, but I will cover the other
11 areas today.

12 THE COURT: Fine.

13 MR. MASTRO: Thank your Honor.

14 THE COURT: We'll interrupt Mr. Stewart and we'll
15 proceed either with Mr. Smyser or your next witness, but in any
16 event, you're free to call Mr. Smyser today, and if we have to
17 resume tomorrow with him, we will.

18 (Witness excused)

19 MR. MASTRO: Our next witness, your Honor, is
20 Mr. Piaguaje, and he will be examined by Peter Seley.

21 JAVIER PIAGUAJE,

22 called as a witness by the Plaintiff,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 (Mr. Jesus Rivera, Spanish Interpreter, was duly

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Piaguaje - direct

1 sworn)

2 BY MR. SELEY:

3 Q. You are a plaintiff in the lawsuit against Chevron in
4 Ecuador, correct?

5 A. Yes.

6 Q. You understand that you are a defendant in the lawsuit here
7 in New York, correct?

8 A. Yes.

9 Q. You are here today to answer questions about documents in
10 Ecuador. Is that right?

11 A. Yes.

12 Q. Your American lawyers asked you to come here today. Is
13 that correct?

14 A. Yes.

15 Q. Who first contacted you about coming here?

16 A. My attorneys.

17 Q. Who in particular?

18 A. Jerry.

19 Q. Are you talking about Jarod Stewart?

20 A. I only know Jarod because I don't speak English.

21 THE COURT: Is the person you are referring to in this
22 room, Mr. Piaguaje?

23 THE WITNESS: Yes.

24 THE COURT: Would you point him out and indicate an
25 article of clothing he is wearing.

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Piaguaje - direct

1 THE WITNESS: My attorney was the one who was
2 testifying earlier.

3 THE COURT: Is it stipulated it is Mr. Stewart, Mr.
4 Veselka?

5 MR. VESELKA: Yes.

6 THE COURT: Mr. Keker?

7 MR. KEKER: Yes.

8 THE COURT: Mr. Mastro?

9 MR. MASTRO: Yes, sir.

10 BY MR. SELEY:

11 Q. When were you first contacted about coming here?

12 A. It was very soon for me. It was Friday.

13 Q. Did Mr. Stewart tell you it was required under U.S. law
14 that you come here to answer questions?

15 MR. VESELKA: Objection, your Honor; attorney-client
16 privilege.

17 MR. SELEY: Let me rephrase.

18 BY MR. SELEY:

19 Q. Did anyone tell you it was required under U.S. law you come
20 here to answer questions?

21 MR. VESELKA: Lack of foundation. It wasn't
22 established any question he asked him about is not one of his
23 counsel.

24 THE COURT: Rephrase the question.

25 BY MR. SELEY:

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Piaguaje - direct

1 Q. Do you understand it was required for you to come here to
2 answer questions?

3 MR. VESELKA: Objection.

4 THE COURT: Sustained.

5 BY MR. SELEY:

6 Q. Mr. Piaguaje, if your lawyers tell you that something is
7 required under U.S. law, do you listen to them?

8 MR. VESELKA: Objection; speculative, your Honor.

9 THE COURT: Overruled.

10 A. Yes, but I have other laws in Ecuador.

11 BY MR. SELEY:

12 Q. Did you volunteer to come to New York, sir?

13 A. For this meeting? For this meeting?

14 Q. Yes.

15 A. Yes, to testify.

16 Q. Because you thought it would help your case?

17 A. Yes, to tell the truth.

18 Q. Did you travel to New York by yourself, sir?

19 A. On the way here, yes.

20 Q. Have you met with any of your Ecuadorian lawyers here in
21 New York?

22 A. No.

23 Q. Did you talk with Pablo Fajardo about coming to New York to
24 testify?

25 A. Yes.

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Piaguaje - direct

1 Q. After talking with Mr. Fajardo, you told your lawyers, your
2 American lawyers, you would testify here in New York. Is that
3 correct?

4 MR. VESELKA: Objection; assumes facts not in evidence
5 as to the sequence, your Honor.

6 THE COURT: Overruled.

7 MR. VESELKA: Attorney-client privilege.

8 THE COURT: Overruled.

9 A. Yes.

10 BY MR. SELEY:

11 Q. You've met with Jarod Stewart before today, correct?

12 A. Yes, to greet him.

13 Q. I am sorry?

14 THE INTERPRETER: To greet him.

15 Q. Not counting this trip to New York, how many times have you
16 met with Mr. Stewart since June 7th of 2012?

17 A. Of 2012?

18 Q. Yes.

19 A. Once, one time, one time it seems about a month and a half
20 ago.

21 Q. How many times have you met with Larry Veselka since June
22 7th, 2012?

23 A. Around three times, I think.

24 Q. Since June 7th, 2012?

25 A. Yes, because I'm also referring to 2011. I am counting

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Piaguaje - direct

1 since 2011.

2 Q. I am asking since June of 2012, how many times have you met
3 with Larry Veselka?

4 A. Here in New York or --

5 Q. Anywhere?

6 A. One time, I think.

7 Q. When was that?

8 A. Also recently, about a month and a half ago, it seems.

9 Q. Have you ever met with Craig Smyser?

10 A. What was that again?

11 Q. Have you ever met with Craig Smyser?

12 A. No.

13 Q. How many times since June of 2012 have you spoken on the
14 phone with Mr. Stewart, Mr. Veselka or Mr. Smyser?

15 A. My attorney?

16 Q. Yes.

17 A. On the phone, yes, several times, but I don't know how
18 many.

19 Q. In July of 2011 you said you used two different cell
20 phones. Is that still true today?

21 A. Of mine?

22 Q. Yes.

23 A. Yes.

24 Q. Did you sign any kind of retainer agreement with the law
25 firm of Smyser Kaplan?

D4HJCHE1

Piaguaje - direct

1 A. No.

2 Q. Did you personally buy both of your cell phones, sir?

3 A. Yes.

4 Q. Are both of your cell phones registered in your name?

5 A. Yes.

6 Q. Do you still have a laptop computer?

7 MR. VESELKA: Your Honor, I have been letting this go,
8 but I object to the scope here to find out --

9 THE COURT: I am as curious as you are.

10 MR. SELEY: It goes to the communication. We heard
11 from Mr. Stewart it was very difficult to reach out to him and
12 get information from him. I am trying to establish it isn't
13 difficult.

14 THE COURT: Let's get to this very quickly.

15 MR. SELEY: I will, sir.

16 BY MR. SELEY:

17 Q. Do you use e-mail to communicate with your American
18 attorneys?

19 A. No.

20 Q. Do you use e-mail to communicate with Mr. Fajardo?

21 A. Very little. He gives me information. And also because I
22 live in the jungle, the service is not continuous. Sometimes
23 it goes for weeks or months.

24 Q. Do you use Facebook?

25 A. Yes.

D4HJCHE1

Piaguaje - direct

1 Q. You update it regularly? You update it regularly?

2 A. When there is reception.

3 Q. When your American attorneys ask you questions about the
4 case in Ecuador, have you ever refused to answer those
5 questions?

6 A. Yes, because some questions they've asked I don't know, so
7 how can I say anything.

8 Q. But if you know the answer to the question that they're
9 asking, you provide them the answer, correct?

10 A. Some, not all.

11 Q. When your American attorneys ask you for documents, have
12 you refused to produce those documents to them?

13 A. Well, as far as me, I would say yes. Also for me I have
14 requested that Fajardo provide documents.

15 Q. All right, sir, you've provided to your lawyers all the
16 documents that you have in your possession, correct?

17 A. Yes, to Pablo.

18 THE COURT: Mr. Seley, I hope we are going to get to
19 some relevant point soon.

20 MR. SELEY: Yes, your Honor.

21 BY MR. SELEY:

22 Q. You have talked to Mr. Stewart by phone on January 10th and
23 11th of this year to provide him information in response to
24 Chevron's interrogatories. Is that correct?

25 A. Of this year?

D4HJCHE1

Piaguaje - direct

1 Q. Yes.

2 A. I don't recall exactly.

3 Q. But you did talk to him by phone to provide him information
4 in response to interrogatories, right?

5 A. No.

6 THE COURT: Mr. Seley, I have not previously been
7 aware of any claim by Chevron that the two individuals did not
8 furnish information that was physically in the possession of
9 the two individuals. I thought this was all about something
10 else. Are we going to get somewhere relevant to what I think
11 it is about?

12 MR. SELEY: Your Honor, I believe two things:

13 First, I want to make sure that that is accurate. We
14 haven't had a chance to talk to him.

15 THE COURT: You're not taking my day to have a
16 deposition of this man about whether he gave you whatever
17 documents he has got in his house.

18 MR. SELEY: I understand, your Honor. All of this
19 goes to points that the other side made. I am getting to
20 exactly the questions about all the allegations they made about
21 what they need to do in Ecuador. That is what I am leading up
22 to.

23 THE COURT: You have been at it for some time. As far
24 as I know, we are not close.

25 MR. SELEY: Thank your Honor. I'll move on.

D4HJCHE1

Piaguaje - direct

1 BY MR. SELEY:

2 Q. Mr. Piaguaje, did anyone tell you before you provided
3 information to your American lawyers that you needed to get
4 permission from every single one of the other 46 Ecuadorian
5 plaintiffs?

6 MR. VESELKA: Objection; calls for attorney-client
7 communication. If the question goes to attorneys, it also
8 lacks foundation.

9 THE COURT: I imagine the foundation would be if he
10 heard such a statement made to him, there would be foundation.
11 If he didn't, he'll tell us. Overruled.

12 A. No.

13 BY MR. SELEY:

14 Q. Are you aware that Mr. Fajardo has sent hundreds of e-mails
15 and documents to Mr. Donziger about the --

16 THE COURT: Mr. Seley, get to the point or finish.

17 MR. SELEY: Your Honor, if I can get this question,
18 then I can ask him if Mr. Fajardo ever sought permission from
19 him, which is what they say they have to do. That goes
20 directly to what they're alleging they need to do under
21 Ecuadorian law. That is the heart of their defense here,
22 right?

23 If you don't believe that is relevant, your Honor, I
24 can move on. I believe it is directly relevant to what they're
25 saying.

D4HJCHE1

Piaguaje - direct

1 MR. VESELKA: We object to this.

2 THE COURT: Look, Mr. Seley, you go ahead if you want.

3 The clock is running against you. I have permitted the time.

4 If you think you're helping yourself with this, go through it.

5 Maybe you'll persuade me it is of some significance that I

6 haven't realized.

7 MR. SELEY: All right, I will move on.

8 BY MR. SELEY:

9 Q. You understand that Chevron asked for documents in this
10 case from your Ecuadorian lawyers?

11 A. Yes.

12 Q. Are you aware that Judge Kaplan ordered you to produce
13 documents from your Ecuadorian lawyers?

14 A. Yes.

15 Q. Did you demand that Mr. Fajardo give you access to the
16 Ecuadorian case files?

17 A. I don't understand.

18 Q. Did you go to Mr. Fajardo and demand that he give you the
19 documents that you were ordered to produce in this case?

20 A. If I demanded it from Fajardo?

21 Q. Yes.

22 A. Orally.

23 Q. What did Mr. Fajardo say?

24 A. Fajardo stated two things. He said, the first thing that
25 he said was there is a law in Ecuador that does not allow to

D4HJCHE1

Piaguaje - direct

1 provide these items from an attorney. The second thing he said
2 was that the full assembly of the plaintiffs have to be in
3 agreement.

4 Q. When did you demand the documents from Mr. Fajardo?

5 A. There is a document that was made through my attorneys. I
6 don't know the exact date.

7 Q. Can you give me your best estimate?

8 A. June of 2012 or 2011 I think it is.

9 Q. June of 2011?

10 A. I don't know exactly.

11 THE COURT: Mr. Seley, correct me if I am wrong.

12 There is no evidence in this record anywhere that this
13 individual or Mr. Camacho ever went to Fajardo and said give me
14 all the documents. Is that correct?

15 MR. SELEY: That's correct, your Honor.

16 THE COURT: And there is no evidence that either of
17 them ever demanded that Fajardo turn them over in U.S.
18 discovery. Is that right?

19 MR. SELEY: That is my understanding, your Honor.

20 THE COURT: And there is no evidence they ever sued
21 him to force turning them over, right?

22 MR. SELEY: That is my understanding as well.

23 THE COURT: Mr. Veselka, do you dispute any of those
24 three propositions?

25 MR. VESELKA: The first one. He just testified he did

D4HJCHE1

Piaguaje - direct

1 address Mr. Fajardo, ask him I believe he said orally, and then
2 he knew of the communications --

3 THE COURT: The proposition was this: There is no
4 evidence in this record anywhere that this individual or
5 Mr. Camacho ever went to Fajardo and said give me all the
6 documents. Do you agree that that is an accurate statement?

7 MR. VESELKA: I don't believe so. I believe he just
8 testified that he asked Mr. Fajardo to give him the documents.
9 He was expressing he knew that we were seeking it. He
10 expressed that, and then Fajardo, he explained why Mr. Fajardo
11 said he couldn't. I believe that is what he just testified to.

12 THE COURT: Then we'll listen to more of this.

13 MR. VESELKA: I am happy to stipulate as to the other
14 two you were saying.

15 THE COURT: Well, fine. Let's go on.

16 MR. VESELKA: We can cut that as to the one issue of
17 he had asked and he knew we were asking I believe is, I believe
18 the evidence is, and then he said what Mr. Fajardo told him and
19 what he said needing to agree as well as to the Ecuadorian law.

20 THE COURT: Mr. Veselka, you know there is actually a
21 difference between asking and demanding, there is, but let's go
22 on.

23 MR. VESELKA: I wasn't focusing on that.

24 THE COURT: Yes. Let's go on.

25 (Continued on next page)

D4hdche2

Piaguaje - direct

1 THE COURT: Let's go on.

2 BY MR. SELEY:

3 Q. When you spoke to Mr. Stewart, did he ever tell you that he
4 knew that there was a hearing in the Cordova case to block the
5 production of documents in Ecuador?

6 A. No. I didn't hear that.

7 Q. And he never told you to go make an appearance in that case
8 and demand your right to the documents, is that correct?

9 MR. VESELKA: Objection. Attorney-client
10 communication. Lack of foundation.

11 THE COURT: Sustained as to form, at least.

12 Q. You didn't make an appearance in that case and assert your
13 right to the documents, is that correct, sir?

14 MR. VESELKA: We will stipulate that.

15 THE COURT: So stipulated.

16 Mr. Keker, do you stipulate to that?

17 MR. KEKER: No, your Honor. I'm not stipulating to
18 any of this. I think this is an outrage, and I don't think
19 that --

20 THE COURT: Mr. Keker, I asked you a simple question.
21 I did not invite you to make a speech.

22 MR. KEKER: No, your Honor. We don't stipulate.

23 THE COURT: Go ahead, counsel.

24 BY MR. SELEY:

25 Q. Mr. Piaguaje, did you ever make an appearance in the

D4hdche2

Piaguaje - direct

1 Cordova case and assert your rights to the documents?

2 A. No.

3 MR. SELEY: All right. Nothing further, your Honor.

4 THE COURT: Pardon me?

5 MR. SELEY: Nothing further, your Honor.

6 THE COURT: Any further questions for this witness
7 from the other side?

8 MR. VESELKA: Very briefly, your Honor.

9 CROSS-EXAMINATION (Through the Interpreter)

10 BY MR. VESELKA:

11 Q. Good morning, Mr. Piaguaje.

12 A. Good morning.

13 Q. I'm Larry Veselka. You remember which one of us I am?

14 A. Yes.

15 Q. You sometimes have trouble remembering whether it is me or
16 Mr. Smyser, is that true, because you do most of the talking
17 with Jarod?

18 A. Yes.

19 Q. You have a position with the Siekopai Indigenous Group?

20 A. Yes. I was the president from 2010 to 2012, I was the
21 president of my nationality, but since June of 2012, when my
22 presidency came to an end, I had been a former president.

23 Q. And as president of your nationality, which is sometimes
24 referred to as the Secuoya and is more technically and properly
25 named Siekopai, did that enable you to -- did that lead you to

D4hdche2

Piaguaje - cross

1 have a role with regard to either the Asamblea, the Assembly
2 of the Afectados, or the Executive Committee?

3 A. Yes, when I was president.

4 Q. Correct. And as one of the plaintiffs in the Lago Agrio
5 case, you have been aware of the -- and through your role in
6 the Assembly, or the Executive, you have been aware of matters
7 in this case as well as in Lago Agrio, correct?

8 A. Yes.

9 Q. You have provided all the documents that you personally
10 have to your lawyers in this case for production in this case,
11 correct -- everything that you had individually?

12 A. No.

13 Q. OK. The documents, you gave some of them to Mr. Fajardo
14 and they were then passed on to us?

15 A. One time it was requested because for the case here, I
16 think it was for Chevron, that I provide things, but I gave my
17 e-mail code, the key, one time. That's what I provided, one
18 time.

19 Q. All right. So you are aware that we, as your lawyers, were
20 seeking documents pertaining to the case as a whole from
21 Mr. Fajardo?

22 MR. SELEY: Objection, your Honor. Leading.

23 THE COURT: Leading, indeed. Sustained.

24 Q. Have you authorized us, as your lawyers, to seek
25 documents --

D4hdche2

Piaguaje - cross

1 MR. SELEY: Objection.

2 Q. -- requested in this litigation?

3 MR. SELEY: Objection. Leading.

4 THE COURT: Overruled.

5 A. The power of attorney to undertake this procedure?

6 Q. Let me rephrase the question.

7 Even before -- the issue of our obtaining documents in
8 Ecuador came up even before the most recent request in 2012.
9 Do you remember that?

10 A. Yes. In order to -- the request for -- I don't know.

11 Q. Do you remember the discussion -- there being discussion --
12 do you remember being aware of efforts to collect documents
13 from Mr. Fajardo back in 2011 in the related earlier part of
14 this case?

15 MR. SELEY: Objection. Leading.

16 THE COURT: You are leading.

17 Next question.

18 Q. Do you remember the issue of obtaining documents about the
19 Ecuadorian case for production in the case in New York --

20 MR. SELEY: Objection. Leading.

21 Q. -- coming up?

22 THE COURT: Overruled.

23 A. Yes. But I'm not always aware of these things because they
24 are in the files, so ...

25 Q. Right. Do you recall -- even if you don't remember when,

D4hdche2

Piaguaje - cross

1 you were asked a question earlier about when you may have had a
2 telephone conversation with Mr. Stewart and/or Mr. Smyser and
3 I. Do you remember telephone conversations where we went
4 through and described questions from Chevron to determine what
5 information you have?

6 MR. SELEY: Objection. Leading.

7 THE COURT: I will allow it.

8 MR. VESELKA: He allowed it.

9 A. Yes.

10 Q. Do you know whether the Assembly turned down Mr. Fajardo's
11 request, or objected to his producing documents from the
12 Ecuadorian case?

13 MR. SELEY: Objection.

14 THE COURT: Sustained.

15 Q. What action, if any, did the Assembly take in respect to
16 any request from Mr. Fajardo?

17 MR. SELEY: Objection. It lacks foundation.

18 THE COURT: Sustained.

19 Q. You testified earlier that you had come as requested
20 because of Chevron's request that you testify here. How long
21 did it take --

22 THE COURT: I didn't hear that testimony. Why don't
23 you just ask your question.

24 Q. How long did it take for you to get here for this
25 testimony?

D4hdche2

Piaguaje - cross

1 THE COURT: Mr. Veselka, that's relevant how?

2 MR. VESELKA: We are going to be questioning on the
3 veracity, if we use it later, of discussions as to the purpose
4 of Chevron trying to drag him here in 36 hours. It's not
5 relevant to the bad faith other than that we --

6 THE COURT: It certainly is not relevant to this
7 hearing. Let's move on.

8 BY MR. VESELKA:

9 Q. Mr. Piaguaje, have you attempted to cooperate with your
10 North American lawyers to comply with the orders of this Court,
11 to the best of your knowledge?

12 MR. SELEY: Objection.

13 THE COURT: Overruled.

14 A. In coming here?

15 Q. Throughout the last two or three years in dealings with us.

16 MR. SELEY: Objection.

17 THE COURT: Overruled.

18 A. Yes.

19 MR. VESELKA: May I consult a second, your Honor?

20 (Pause)

21 We will pass the witness, your Honor.

22 MR. KEKER: I have a few questions, your Honor.

23 THE COURT: All right.

24 CROSS-EXAMINATION

25 BY MR. KEKER:

D4hdche2

Piaguaje - cross

1 Q. Sir, what is the Assembly of Afectados?

2 MR. SELEY: Objection.

3 THE COURT: Sustained.

4 MR. KEKER: Your Honor, may I make an offer of proof
5 and explain to you why that is totally relevant in this case?
6 It couldn't be more relevant. It is the most relevant fact
7 here.

8 THE COURT: Really?

9 MR. KEKER: Yes.

10 THE COURT: That is quite a statement.

11 I will hear it at the sidebar.

12 MR. KEKER: Thank you, your Honor.

13 (At the sidebar)

14 MR. KEKER: Your Honor, the Assembly of Afectados, as
15 I understand it, is the assembly of the clients, the affected
16 ones, in the region that Chevron and Texaco polluted. They are
17 the ones that make decisions. They are the ones that are the
18 client that give the powers of attorney to Mr. Fajardo.

19 Mr. Fajardo came to the Assembly and told them that
20 Chevron was making these demands, told them -- in fact, they
21 made the decisions about all of this -- are they going to
22 appear, who is going to appear in the United States. He told
23 them that these demands were being made and that they wanted --
24 did they want him to turn over his files to this Court. And
25 they voted and they voted no.

D4hdche2

Piaguaje - cross

1 Now, this man happened to be the president of the
2 Assembly when they made that vote. What is more relevant to
3 this proceeding than that? I understand --

4 THE COURT: And this, in your estimation, occurred
5 when?

6 MR. KEKER: I'm not sure when the vote was but the
7 vote was at a material time. It was while he was president.
8 He was president in the last couple of years.

9 THE COURT: Well, he hasn't been president since
10 sometime in 2012.

11 MR. MASTRO: Correct. That was his testimony today,
12 that he wasn't.

13 MR. KEKER: That is right. But when he was on the
14 Assembly they voted that they did not want their documents.

15 THE COURT: Mr. Keker, when did it happen?

16 MR. KEKER: I don't know because I haven't talked to
17 this man. But isn't it relevant -- why don't we find out
18 through testimony when it happened?

19 MR. MASTRO: We didn't even ask for the documents
20 until June of 2012, long after he was no longer --

21 THE COURT: And the order wasn't added until when?

22 MR. KEKER: February 10th.

23 THE COURT: Of what year?

24 MR. MASTRO: 2013.

25 MR. KEKER: 2013. Can we just talk about this a

D4hdche2

Piaguaje - cross

1 little bit more?

2 This has been on the table since the Count Nine
3 action.

4 THE COURT: Where were the affidavits on this?

5 MR. KEKER: On what?

6 THE COURT: On everything you are saying now.

7 MR. SMYSER: Mr. Stewart has testified that the
8 requests were made back in 2011. We have had been requesting
9 these documents since Count Nine started. This issue has been
10 teed up for a long time, your Honor.

11 MR. KEKER: Can I say -- I'm sorry. Excuse me.

12 THE COURT: No. You may not right now, Mr. Keker.
13 You keep talking over me and you keep talking over others.

14 MR. KEKER: I'm sorry. I don't mean to.

15 THE COURT: I understand. It is a flaw that I share
16 with you sometimes -- at least my wife will tell you that.

17 But if all this was so relevant, why wasn't it in any
18 of your papers?

19 MR. SMYSER: Which part, your Honor? I think it is in
20 our papers that Mr. Fajardo demanded that these documents be
21 turned over, and it was rejected.

22 THE COURT: Mr. Fajardo demanded it?

23 MR. SMYSER: We demanded it of our clients. We
24 demanded it of Mr. Fajardo. Mr. Fajardo demanded it of the
25 Assembly. I have no rights in the Assembly.

D4hdche2

Piaguaje - cross

1 THE COURT: He demanded it?

2 MR. SMYSER: That's my understanding, your Honor.

3 THE COURT: And we are going to then have Mr. Fajardo
4 testify as to what happened there and what advice he gave them?

5 MR. SMYSER: No, your Honor.

6 THE COURT: We are going to get what advice he gave
7 them?

8 MR. SMYSER: He will not testify. He has declined to
9 come.

10 MR. GOMEZ: Excuse me, your Honor. This witness --

11 THE COURT: Who are you?

12 MR. GOMEZ: Julio Gomez, on behalf of --

13 THE COURT: I've got one, two, three lawyers for your
14 clients. I'm going to hear from one of them. Who is it?

15 MR. SMYSER: It would be me, your Honor.

16 THE COURT: All right.

17 MR. SMYSER: I can't add anything more to what I have
18 said. Mr. Fajardo will not testify. We have asked him to
19 testify. He has refused.

20 THE COURT: And have you put in any affidavits
21 whatsoever about this supposed event with the Afectados
22 anywhere in your affidavits?

23 MR. SMYSER: I can't recall off the top of my head,
24 your Honor. I will look and see if I can find it. I will let
25 the Court know.

D4hdche2

Piaguaje - cross

1 THE COURT: What about you, anything in the
2 affidavits, Mr. Keker?

3 MR. KEKER: I don't know, but the affidavit has been
4 in our responses. We have said --

5 THE COURT: In what responses?

6 MR. KEKER: In our responses to the sanctions motion,
7 in our responses to the discovery --

8 THE COURT: Where? I want to know where. I want to
9 see it.

10 MR. KEKER: You didn't let me finish what I was going
11 to say about what was in there.

12 THE COURT: Go ahead.

13 MR. KEKER: What was in their response is we said that
14 this is a setup and this has been perfectly obvious it was
15 going to happen since the very beginning of the original RICO
16 case, that Fajardo has made his position plain. This idea
17 there is a difference between asking and demanding when you've
18 got somebody who says I ain't doing it, it's illegal in
19 Ecuador, no way am I doing it, for you to draw some huge
20 distinction between asking and demanding I think is not
21 justified on this record. And in our response --

22 THE COURT: Mr. Keker, we are here at the sidebar to
23 hear your offer of proof. I know you are unhappy with rulings
24 I have made.

25 MR. KEKER: Very, your Honor.

D4hdche2

Piaguaje - cross

1 THE COURT: I understand that.

2 MR. KEKER: Yes, sir, your Honor.

3 THE COURT: Now, what is the offer of proof?

4 MR. KEKER: The offer of proof is that there was an
5 Assembly meeting at which Fajardo came and this is -- Fajardo
6 came and said that we have been demanded of, asked of, to
7 produce the documents that I have in the Chevron litigation up
8 in New York. And the Assembly, as I understand it, voted on it
9 and said no.

10 THE COURT: When?

11 MR. KEKER: And I just told you, I can't tell you the
12 date, but it was obviously after these demands began. So it is
13 after the RICO action was filed.

14 THE COURT: Before or after the Order was entered this
15 year?

16 MR. KEKER: Well, I would assume it's got to be before
17 the order was entered this year of February 10, 2013.

18 Could I say about that Order, your Honor, that Order
19 says -- and somehow you had made a decision in that Order that
20 these documents had to be produced in the New York action. You
21 said, in the last line, a reasoned -- I'm going to explain my
22 reasoning. We still don't know your reasoning about why you
23 thought at that time, knowing what Fajardo's position was,
24 knowing what the Ecuadorian Court had said, why you thought it
25 was appropriate to order us to produce these documents when you

D4hdche2

Piaguaje - cross

1 knew that that was a physical impossibility for us to do.

2 And so that kind of leaves us somewhat stymied in
3 dealing -- and then the next thing that comes, instead of a
4 reasoned opinion, comes this claim that we're acting in bad
5 faith. Plus, I get letters from this guy telling me that I am
6 a liar because when I say he is a pariah, when I say he is
7 being pushed away --

8 THE COURT: This time is all coming out of your time
9 here because this has been mainly not an offer of proof, it has
10 been mainly a grievance session, and we are just not going to
11 continual on that basis. And if the offer of proof is
12 finished, I would like to know it.

13 MR. KEKER: It is, your Honor. I've said everything
14 that I know about -- and I can't give you that date.

15 THE COURT: Well, except that you told me it was
16 before the Order was entered.

17 MR. KEKER: Right.

18 THE COURT: So far as an opinion is concerned, you
19 will undoubtedly get it with respect to the sanctions motion,
20 and it just ultimately seemed to me that it was pointless to do
21 it twice.

22 MR. SMYSER: Your Honor, excuse me. I didn't mean to
23 interrupt.

24 THE COURT: No. I was finished.

25 MR. SMYSER: Can we ask this witness about whether or

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Piaguaje - cross

1 not that vote occurred and the date when that vote occurred?

2 THE COURT: You cannot lead him. And I will allow
3 you, if you first lay a proper foundation -- because at the
4 moment the best judgment I can form on the record is whatever
5 he has got is complete hearsay, but that may be wrong, that's
6 the way I'm reading it because he said he was involved with
7 that organization when he was the president of this other thing
8 and that ended in 2012, and none of it postdates the Court
9 Order -- I will let you go a little way with it, but I think
10 this is really a serious imposition. I think that, if I'm
11 correct in remembering, this is a brand new argument launched
12 here today, after full briefing and affidavits, and it has a
13 little something -- some significance on the question of
14 credibility.

15 MR. KEKER: Judge, could I respond to that?

16 THE COURT: No.

17 MR. KEKER: Because --

18 THE COURT: No. Let's move on.

19 (In open court)

20 THE COURT: You may proceed.

21 MR. KEKER: Thank you, your Honor.

22 BY MR. KEKER:

23 Q. Sir, what is the Assembly of Afectados, very briefly?

24 A. The Assembly of the Afectados is a group, a group of people
25 who were affected by the pollution.

D4hdche2

Piaguaje - cross

1 Q. Were you the president of the Assembly at some point?

2 A. No.

3 Q. Did you hold any office in the Assembly of Afectados?

4 A. The only time I was a leader was when I was in the
5 committee but not in the Assembly.

6 Q. What's the committee?

7 A. No. It is an assembly of all the people affected. Right?
8 And then there are committees, or cooperatives, for each of the
9 nationalities and according to those chosen, according to their
10 leaders.

11 Q. Were you a leader of one of those cooperatives?

12 A. No. Well, yes, but within my nationality. Yes.

13 Q. And is that called Secuoya?

14 A. Yes.

15 Q. And did the Secuoya committee meet with the other
16 committees in the Assembly?

17 A. Of course, when an assembly would meet, all the
18 representatives would meet; all of us representatives would
19 meet.

20 Q. When the representatives met, when you were there, did the
21 subject of providing documents in this case to Chevron ever
22 come up?

23 MR. SELEY: Objection, your Honor. Leading.

24 THE COURT: No. Overruled.

25 A. If the attorneys would give legal -- judicial information,

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Piaguaje - cross

1 because for my part I don't know about legal information, so
2 they would inform us.

3 Q. And did any attorney discuss with the Assembly whether or
4 not to produce documents to Chevron in this case in New York,
5 in the United States?

6 MR. SELEY: I object to form, your Honor.

7 THE COURT: Pardon me?

8 MR. SELEY: I object to form, your Honor.

9 THE COURT: Mr. Piaguaje, answer that question "yes"
10 or "no" with respect only to occasions when you were present.

11 MR. SELEY: OK.

12 A. In those meetings, no. We would be only informed -- just
13 given the report that Chevron is requesting documents.

14 Q. And did the Assembly take any action with respect to that
15 report?

16 MR. SELEY: Objection, your Honor.

17 THE COURT: Sustained. That is leading.

18 Q. As a result of that report, did anything happen?

19 A. Yes. Then I had to look for the other colleagues and they
20 were in agreement that it couldn't be done.

21 Q. And how did they come to that agreement, was it by vote or
22 some other way?

23 MR. SELEY: Objection, your Honor. I want to make
24 sure he is talking about when he was actually present.

25 THE COURT: Were you present on the occasion you are

D4hdche2

Piaguaje - cross

1 discussing, Mr. Piaguaje?

2 THE WITNESS: Yes -- no. No, not a lot but I was at
3 some meetings.

4 MR. SELEY: Well --

5 THE COURT: Go ahead, Mr. Keker.

6 Q. Were you ever at a meeting when a decision was made about
7 producing documents?

8 MR. MASTRO: Objection.

9 THE COURT: What is the objection?

10 One lawyer, please.

11 MR. MASTRO: Sorry. Go ahead.

12 MR. SELEY: Objection. Leading, your Honor.

13 THE COURT: I think so. Rephrase your question.

14 BY MR. KEKER:

15 Q. When you were present, did anything happen with respect to
16 producing documents or not in this case in the United States?

17 A. When I was in a meeting -- well, not all the -- it was only
18 the representatives and not all the plaintiffs were there.

19 Q. When you were in a meeting with the representatives of the
20 various private groups, was any action taken with respect to
21 producing documents in this case?

22 MR. SELEY: Objection.

23 THE COURT: Overruled.

24 A. We had talked about that issue, but then if Attorney
25 Fajardo later says that it cannot be done because there are

D4hdche2

Piaguaje - cross

1 laws in Ecuador, laws that say that it couldn't be done, then
2 also the other colleagues are also in agreement.

3 Q. When you say "the other colleagues," who are you referring
4 to?

5 A. Well, I mean the plaintiffs.

6 Q. The plaintiffs in the Lago Agrio case?

7 A. Yes.

8 Q. Did the plaintiffs ever have a vote on that subject?

9 MR. SELEY: Objection.

10 THE COURT: Sustained.

11 Q. Do you remember when this conversation that you heard with
12 Attorney Fajardo happened?

13 A. This was not too long ago, a-month-and-a-half ago that I
14 talked about this issue. Yes, it's since then we started
15 talking about this.

16 Q. So you think this was a discussion that was had in this
17 year, 2013?

18 A. Yes.

19 Q. Do you know if it happened -- or did you -- did anybody
20 ever say that Judge Kaplan issued an order on the subject of
21 documents in Ecuador this year? Did you learn that?

22 MR. SELEY: Objection. Leading.

23 MR. KEKER: I'm trying to move this along, your Honor.
24 This is a man who is not totally sophisticated as a witness.

25 THE COURT: Well, yeah, and you are.

D4hdche2

Piaguaje - cross

1 And the objection is sustained.

2 Q. A month and a half ago is around March 1st. Do you believe
3 that this was discussed by the Afectados and the Assembly
4 around March 1st, 2013?

5 MR. SELEY: Objection, your Honor.

6 THE COURT: Sustained. It is leading.

7 MR. KEKER: Nothing further.

8 Thank you.

9 THE COURT: Thank you.

10 MR. KEKER: Thank you, sir.

11 THE COURT: Any further examination by plaintiff?

12 MR. SELEY: No further questions, your Honor.

13 THE COURT: All right. Is there any reason I
14 shouldn't excuse this witness altogether at this point?

15 MR. MASTRO: None, your Honor.

16 MR. VESELKA: Not that we are aware of, your Honor.

17 THE COURT: Mr. Keker.

18 MR. KEKER: Yes, your Honor, we would like him
19 excused.

20 THE COURT: Mr. Piaguaje, thank you and thank you for
21 coming, and you are excused and I wish you a good journey.

22 THE WITNESS: Thank you.

23 (Witness excused)

24 THE COURT: OK. Let's take a short break, ten
25 minutes.

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1 THE CLERK: All rise.

2 (Recess)

3 THE COURT: OK. Next.

4 MR. KEKER: Your Honor, their next witness is an
5 expert, and we have an objection to his testimony.

6 Could I make that objection?

7 THE COURT: I would like to know who the expert is
8 first and what it is about.

9 MR. MASTRO: Your Honor, Ms. Neuman is going to do
10 that examination so she will respond.

11 MS. NEUMAN: Your Honor, the expert Chevron would call
12 is Dr. Santiago Efrain Velazquez Coello. He is an expert in
13 Ecuadorian law.

14 THE COURT: What is the full name?

15 MS. NEUMAN: Santiago Efrain Velazquez Coello.

16 THE COURT: The last name is spelled?

17 MS. NEUMAN: The second last name is spelled
18 C-o-e-l-l-o. The witness will go by Dr. Velazquez.

19 THE COURT: All right. And what in general is he
20 supposed to say?

21 MS. NEUMAN: In general, Dr. Velazquez will testify
22 regarding Ecuadorian secrecy law, whether the clients are
23 entitled to their files, whether co-plaintiffs have to consent
24 or not in the Cordova action.

25 THE COURT: Don't we have all of this in the record?

D4hdche2

1 MS. NEUMAN: I believe this is largely covered by
2 Dr. Velazquez's reports, your Honor.

3 THE COURT: And is that in the record?

4 MS. NEUMAN: His first report is but his rebuttal
5 report is not yet in the record.

6 THE COURT: And it will be when?

7 MS. NEUMAN: We are going to have him confirm it
8 today, but it was served on the other side on April 12th, when
9 the rebuttal reports were due.

10 THE COURT: So why don't you just give me the reports.

11 MS. NEUMAN: OK, your Honor.

12 THE COURT: Is there any objection to that?

13 MR. KEKER: No, your Honor, except there is an
14 objection to the relevance of the reports, but I don't object
15 to the procedure of you taking the reports in rather than
16 listening to this guy.

17 THE COURT: OK.

18 MR. KEKER: But I do object to using the information
19 in any way. If I could say why?

20 THE COURT: Briefly.

21 MR. KEKER: His testimony about Ecuadorian law is not
22 relevant to any of your five questions. And much more
23 particularly, by the time you issued your order which the
24 sanctions motion is on, you had obviously made up your mind
25 about what Ecuadorian law requires.

D4hdche2

1 THE COURT: I would say that is rather a presumptuous
2 statement on your part, Mr. Keker, but go ahead.

3 MR. KEKER: You had -- well, the whole premise of the
4 order was we told you that we don't have control over these
5 documents and we couldn't do it. You ordered us --

6 THE COURT: Mr. Keker, I am not here to argue with
7 you. That's not why I said what said. I said it because I
8 didn't want to let it go unanswered --

9 MR. KEKER: Yes, your Honor.

10 THE COURT: -- only to have you then argue in some
11 other place that I agreed with you.

12 MR. KEKER: I --

13 THE COURT: You know, I've said what I have to say.

14 MR. KEKER: Then the objection is this: The objection
15 is that at the time of the Order that the five questions are
16 addressed to, the Ecuadorian Court had issued its opinion,
17 there were dueling expert reports -- one from Velazquez, one
18 from our -- from the LAP side. So we all knew about that. You
19 made a decision on the Order. And then you issued this Order
20 saying we're going to have a decision on good faith, on
21 practical ability and so on. What Dr. Velazquez says about
22 Ecuadorian law doesn't add anything to that.

23 And, in particular, I would point you to that opinion
24 that was mentioned yesterday where Judge Kollar-Kotelly, in the
25 District --

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1 THE COURT: I got the point that your position is it
2 is not relevant to the subject of this hearing. I understand
3 that. OK? I am not here having oral argument on this whole
4 proposition.

5 MR. KEKER: Sure. Then we would object to him
6 testifying.

7 THE COURT: Well, it has already been agreed that he
8 is not going to do that, that I am going to take the reports.

9 MR. KEKER: OK. Then we object to you using the
10 reports for any purpose. But we don't object to you getting
11 the reports, and if you are going to use them, taking the
12 reports, as opposed to his testimony.

13 THE COURT: Fine. That's all we were trying to
14 accomplish here.

15 OK. Next witness.

16 MR. MASTRO: Your Honor, we would call Craig Smyser,
17 but we will not be questioning him today on the circumstances
18 in which the Cordova lawsuit was initiated, carried out, and
19 the knowledge of his firm and participation of his firm in that
20 process.

21 THE COURT: Understood.

22 Go ahead, Mr. Smyser.

23 CRAIG SMYSER,

24 called as a witness by the plaintiff,

25 having been duly sworn, testified as follows:

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THE CLERK: Thank you. Please be seated.

If you can please state your name for the record?

THE WITNESS: Craig Smyser, S-m-y-s-e-r.

THE COURT: You may proceed, Mr. Mastro.

MR. MASTRO: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MASTRO:

Q. Mr. Smyser, am I correct that it was Mr. Fajardo who arranged for you to get a declaration from Nicholas Zambrano?

A. Not entirely.

Q. Did Mr. Fajardo help arrange for you to meet with Mr. Zambrano?

A. Yes.

Q. And he arranged that meeting for you in person with Mr. Zambrano on August 14, 2012, correct, sir?

A. I think that was the date.

Q. You and Mr. Stewart met with Mr. Zambrano and Mr. Fajardo that day, correct?

A. Yes.

Q. And did there come a time when you all decided you wanted to try to get a declaration from Mr. Zambrano?

MR. KEKER: Objection, your Honor. Scope.

THE COURT: Yes.

MR. MASTRO: It goes, your Honor, to Mr. Fajardo facilitating getting them information or work product when it

D4hdche2

Smyser - direct

1 suited their purposes but not producing documents when he
2 didn't want to.

3 MR. KEKER: I think the record is very clear that
4 Mr. Fajardo does both as he chooses, your Honor. That's what
5 the testimony has been. He will help when he thinks it is
6 useful. He won't when he doesn't want to do it. Mr. Fajardo
7 is his own man.

8 MR. MASTRO: I think that is a startling statement but
9 I will go on.

10 MR. VESELKA: I disagree with the characterization of
11 the witness statement declaration by Mr. Zambrano.

12 THE COURT: I'm sorry?

13 MR. VESELKA: I disagree with Mr. Mastro's
14 characterization of the witness statement as work product.
15 Once the declaration was there and he provided it, it is a
16 witness statement.

17 THE COURT: So far all the witness has said was that
18 he met with Messrs. Zambrano and Fajardo, and the pending
19 question is only did there come a time when you all decided you
20 wanted to try to get a declaration from Mr. Zambrano. All of
21 this discussion is a little bit off that point.

22 Do you want to rephrase the question, possibly, in a
23 way that obviates any such issues?

24 MR. MASTRO: Certainly, your Honor.

25 BY MR. MASTRO:

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Smyser - direct

1 Q. Did Mr. Fajardo work with your firm on the drafting of the
2 Zambrano declaration?

3 A. In part.

4 Q. Did you exchange communications with Mr. Fajardo about the
5 draft Zambrano declaration?

6 MR. KEKER: Objection. Scope.

7 THE COURT: Oh, no. I think it is appropriate.

8 A. Yes.

9 Q. Did Mr. Fajardo make written revisions on the draft
10 Zambrano declaration that he sent to you?

11 A. I wouldn't call it revisions.

12 Q. Changes.

13 A. Mr. Fajardo prepared a draft of a declaration, and I
14 understand that draft to have been different from anything we
15 sent.

16 Q. And he prepared that in Ecuador, correct?

17 A. Yes.

18 Q. And he sent that document to you in the United States,
19 correct, sir?

20 A. No.

21 Q. You worked on that with him in Ecuador?

22 A. No.

23 Q. Mr. Fajardo did a draft declaration for Mr. Zambrano that
24 you reviewed, correct, sir?

25 A. I can't remember if I reviewed a draft of a declaration or

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Smyser - direct

1 whether I heard that Mr. Fajardo had prepared a draft.

2 Q. And Mr. Fajardo prepared that draft at your request,
3 correct, sir?

4 A. No. We did not ask him to prepare that draft.

5 Q. Did you ask him to speak to Mr. Zambrano about giving a
6 declaration?

7 A. We spoke to Mr. Zambrano asking him for a declaration.

8 Q. And you then spoke to Mr. Fajardo about drafting
9 Mr. Zambrano's declaration, correct?

10 A. We spoke to Mr. Fajardo about obtaining the declaration
11 from Mr. Zambrano.

12 Q. And when did you have that conversation, sir?

13 A. After October 14, 2012.

14 Q. And Mr. Zambrano ultimately did give you a declaration,
15 correct?

16 A. Correct.

17 Q. And it was Mr. Fajardo who had drafted it and then brought
18 it to Mr. Zambrano to review, correct?

19 A. That's not my understanding.

20 Q. But Mr. Zambrano -- strike that.

21 Mr. Fajardo did do a draft declaration, correct?

22 A. My understanding is that he prepared a draft declaration
23 which was not the declaration that Mr. Zambrano ultimately
24 produced.

25 Q. Did you see the draft declaration that Mr. Fajardo

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Smyser - direct

1 prepared?

2 A. I've already said I don't recall whether I reviewed it or
3 heard about it.

4 Q. And is it your understanding that Mr. Zambrano received
5 Mr. Fajardo's draft and reviewed and edited it?

6 A. I have no understanding one way or the other about that.

7 Q. Did you ask -- strike that.

8 Am I correct that it was Mr. Fajardo who had the
9 interactions with Mr. Zambrano about securing the content of
10 Mr. Zambrano's declaration?

11 A. I don't know if it was Mr. Fajardo who interacted with
12 Mr. Zambrano to secure --

13 Q. It wasn't you, was it, sir?

14 A. It was not me.

15 Q. It wasn't Mr. Stewart, it wasn't Mr. Veselka, it wasn't
16 anybody from the Smyser Kaplan & Veselka, was it, sir?

17 A. Correct.

18 Q. It was lawyers in Ecuador working for the LAPs, correct?

19 A. I have no idea who it was in Ecuador.

20 Q. Are you saying as you sit here now you don't know that
21 Mr. Fajardo communicated with Mr. Zambrano about the substance
22 of his declaration?

23 A. I didn't say that.

24 Q. OK. So he did, Mr. Fajardo, communicate with Mr. Zambrano?

25 A. I assume he did. I don't know that he did.

D4hdche2

Smyser - direct

1 Q. Who delivered the declaration to you, sir?

2 A. I believe we received it by e-mail.

3 Q. From Mr. Fajardo, correct?

4 A. I believe it was Mr. Fajardo or someone in his office.

5 Q. One of the lawyers in Ecuador working for the LAPs,
6 correct?

7 A. I believe that's correct.

8 Q. And am I also correct that in that context Mr. Fajardo was
9 able to obtain for you a tape recording that Mr. Zambrano had
10 made of a conversation that he had on the telephone in
11 January 2013 with Andres Rivera, a lawyer representing Chevron?

12 A. I'm not sure I understand your reference there. The "he"
13 in that sentence is --

14 Q. Mr. Fajardo, when he conveyed to you Mr. Zambrano's
15 declaration, was also able to convey to you a copy of this tape
16 recording that Mr. Zambrano had made of a telephone
17 conversation he had with Andres Rivera in January 2013,
18 correct, sir?

19 A. That he, Mr. Zambrano, had? Yes, he conveyed that.

20 Q. Now, you'll recall that Chevron made a motion to compel the
21 plaintiffs, the LAP representatives, your clients, in this case
22 to produce that tape recording, correct?

23 A. Yes.

24 Q. And you responded to that motion, quote, We do not have the
25 recordings that are the subject of Chevron's motion, and that

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Smyser - direct

1 you never had them; do you recall that, sir?

2 A. Yes.

3 Q. But am I also correct that your lawyers in Ecuador,
4 Mr. Fajardo and others, had obtained a copy of that tape
5 recording?

6 MR. KEKER: Objection to the form of the question.
7 "Your lawyers in Ecuador."

8 THE COURT: Rephrase.

9 MR. MASTRO: Certainly.

10 (Continued on next page)

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D4HJCHE3

Smyser - direct

1 Q. Isn't it a fact, sir, that the Ecuadorian lawyers
2 representing your similar clients, Mr. Fajardo, and the other
3 Ecuador I can't lawyers had obtained a copy of that tape
4 recording that Mr. Zambrano made?

5 A. All I know is that they had a copy that they sent to me
6 with Mr. Zambrano's declaration.

7 Q. So when you told this Court, in opposing our motion, that,
8 "We do not have the recordings that are the subject of
9 Chevron's motion," did you know whether your lawyers in
10 Ecuador -- strike that.

11 When you represented to the court that, "We do not
12 have the recordings that are the subject of Chevron's motion,"
13 did you know at that time whether any of the Ecuadorian lawyers
14 representing your same clients, Mr. Fajardo or others, had a
15 copy of that tape recording?

16 A. No.

17 Q. Did you ask them at the time that you made that
18 representation to the court whether they had a copy of that
19 tape recording?

20 A. No.

21 Q. Did you know from press reports that appeared in Ecuador in
22 January 2013 and that had been submitted to this Court in our
23 pleadings that you received copies in the normal course of this
24 litigation, that your Ecuadorian lawyers were commenting on the
25 substance of that tape recording --

D4HJCHE3

Smyser - direct

1 MR. KEKER: Objection to form.

2 Q. -- in public statements in January 2013?

3 MR. KEKER: Objection to the form of the question.

4 THE COURT: Overruled.

5 A. I knew there were comments about a tape recording.

6 BY MR. MASTRO:

7 Q. So shouldn't you have, if you were exercising a reasonable
8 diligence that you're supposed to exercise in complying with
9 discovery requests and court orders, have asked the Ecuadorian
10 lawyers, including Pablo Fajardo who commented publicly in
11 January 2013 about the substance of that tape recording that
12 Mr. Zambrano made, do you have the tape, can you give it to me
13 so I can give it to Judge Kaplan?

14 A. No.

15 Q. Or to Chevron because they have asked for it in a motion?

16 A. No.

17 Q. You never asked that question, did you?

18 A. No, I did not because discovery has passed.

19 Q. Let's go onto something else.

20 THE COURT: That is the reason you didn't ask at the
21 time for discovery was passed?

22 THE WITNESS: That is certainly what I am thinking
23 now, your Honor. I didn't ask because I didn't think to ask
24 for it.

25 BY MR. MASTRO:

D4HJCHE3

Smyser - direct

1 Q. But you did think to represent to this Court that "we do
2 not have it," when you had every reason to know the Ecuadorian
3 lawyers representing your same clients had it in their
4 possession incredibly from Mr. Zambrano at the time you made
5 the recording because they commented on it publicly?

6 A. We means me. We did not have the recording, had not seen
7 the recording, had not listened to the recording --

8 Q. You didn't ask for it, sir, you --

9 THE COURT: Now you are interrupting the witness.

10 MR. MASTRO: Sorry, your Honor.

11 BY MR. MASTRO:

12 Q. Go ahead, Mr. Smyser.

13 A. We did not have the recording. We had not heard the
14 recording, listened to the recording. For all I knew, the
15 recording was in the possession of Mr. Fajardo, but it was not
16 in our possession, and Mr. Fajardo always refused to turn
17 documents over to us at our request, and you know that.

18 Q. Sir, so every time you say "we" to the court, even though
19 the discovery requests are to defendants and those who are
20 their co-counsel, agents or representatives, including the
21 Ecuadorian lawyers like Mr. Fajardo, when you say "we" to the
22 court, you just mean you, correct, sir?

23 A. No.

24 Q. All right. I will go on. If Mr. Fajardo had that tape
25 recording -- strike that.

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Smyser - direct

1 Assuming Mr. Fajardo had that tape recording in
2 January 2013, would you have considered that to be work product
3 that he had collected?

4 A. I didn't know the circumstances about how he had gotten the
5 recording. I knew nothing about that.

6 Q. But when it suited Mr. Fajardo's purpose to make that tape
7 recording available as an exhibit to Mr. Zambrano's
8 declaration, you were happy to receive it and he was happy to
9 give it, wasn't he, sir?

10 A. I do not know how Mr. Fajardo obtained that recording,
11 whether he obtained that recording in conjunction with
12 obtaining the declaration and what he produced was Mr.
13 Zambrano's original that Mr. Fajardo did not have in his
14 possession. I do not accept the premise of your question.

15 Q. Let's try this premise, sir.

16 THE COURT: Let's try questions.

17 Q. Am I correct you have received hundreds of draft pleadings
18 of the Ecuadorian lawyers related to their case?

19 You have been shipped hundreds of draft pleadings by
20 Mr. Fajardo and his colleagues in Ecuador for you to see and
21 review here in the United States, correct, sir, hundreds?

22 A. I am actually not sure that that is entirely correct. I
23 know we have received pleadings from the old case down in
24 Ecuador, drafts of those. I don't think it's the hundreds and
25 hundreds that you --

D4HJCHE3

Smyser - direct

1 Q. Do you want to refresh your recollection looking at your
2 own privilege log, the first 22 pages of the log? Do you want
3 to refresh your recollection? Do we have to waste the court's
4 time to do that?

5 THE COURT: Ask a question.

6 A. That is your decision.

7 MR. MASTRO: Certainly, your Honor.

8 BY MR. MASTRO:

9 Q. It would be fair to say you have received well north of 400
10 draft pleadings from the Ecuadorian lawyers, Fajardo and the
11 other Ecuadorian lawyers representing the -- correct, sir?

12 A. I don't really know.

13 Q. Certainly more than a hundred, correct, sir?

14 A. I think that's correct.

15 Q. Thank you. Am I also correct, sir, that you wrote a letter
16 to Mr. Fajardo on February 15th, 2013 in regard to the court's
17 order of February 13th, 2013 compelling production of the
18 Ecuadorian documents? Do you recall that, sir?

19 A. I do.

20 Q. Mr. Kecker also --

21 MR. KEKER: You know, I am --

22 Q. -- also to Mr. Fajardo on February --

23 MR. KEKER: -- I am tired of this hostile -- do we
24 have to be polite to them? If we want to call each other
25 punks, I am willing to do that, but what is this? Can we just

D4HJCHE3

Smyser - direct

1 have a hearing, your Honor?

2 THE COURT: We have been trying for two days, Mr.
3 Keker.

4 MR. KEKER: I think we are doing fine until we get
5 into this kind of super hostile. If we are supposed to be
6 polite, he has to be a bit polite. If nobody will be polite,
7 that is fine, too. We can play either way.

8 THE COURT: Everybody is going to be polite. That
9 includes all counsel.

10 BY MR. MASTRO:

11 Q. Am I also correct that Mr. Keker sent a letter to
12 Mr. Fajardo on February 14th, 2013 on that same subject?

13 A. Yes.

14 Q. Am I correct that Mr. Keker's letter sent the day before
15 yours was a letter that you saw before you sent your letter?

16 A. I don't know that to be true. I would assume so, but I
17 don't know. I don't remember.

18 Q. Would it refresh your recollection as to whether you saw
19 Mr. Keker's letter before you sent your letter to know that
20 both of you used the same formulation of inquiry when you said
21 to Mr. Fajardo, first Mr. Keker on the 14th and then you on the
22 15th, that you wanted him to, "notify me immediately whether,"
23 he would produce the Ecuadorian documents?

24 A. I've seen Mr. Keker's letter recently. I don't think it
25 would refresh my recollection on the subject you're asking me

D4HJCHE3

Smyser - direct

1 about.

2 Q. Do I have to show you both used that same formulation?

3 THE COURT: I don't know why we're taking time to have
4 colloquy with the witness about a comparison of two letters I
5 am perfectly capable of reading for myself.

6 MR. MASTRO: I am coming to the point now, your Honor.

7 BY MR. MASTRO:

8 Q. Mr. Smyser, when you made your request of Mr. Fajardo, you
9 didn't ask him to please send you the documents because you
10 were under a court order; you asked him to notify you whether
11 he would, correct, sir?

12 A. In the letter, the letter speaks for itself. I believe
13 you're correct in the letter. We had a phone conversation in
14 which we asked him to send us the documents.

15 Q. In the exercise of reasonable diligence to comply with the
16 court's order, don't you think you should have made the request
17 for him to do it as opposed to whether he would do it?

18 THE COURT: Mr. Mastro, this is just not helpful.

19 MR. MASTRO: I will move on, your Honor?

20 A. We translated --

21 THE COURT: There is no question pending, please.

22 THE WITNESS: Sorry.

23 BY MR. MASTRO:

24 Q. Now, Mr. Smyser, am I correct that --

25 THE COURT: You know, I said I set aside the

D4HJCHE3

Smyser - direct

1 equivalent of up to three days, but the keywords are "up to."
2 There is no obligation to fill them.

3 MR. MASTRO: I understand. We are not going to, your
4 Honor. This is our last witness for the purposes of this
5 hearing. So we have cut back on the witnesses, your Honor.
6 This is our last witness.

7 BY MR. MASTRO:

8 Q. Mr. Smyser, am I correct that you report on this case to
9 Mr. Fajardo about what is going on in this case?

10 A. I give communications to Mr. Fajardo about what goes on in
11 this case.

12 Q. Do you communicate with Mr. Fajardo about what is going on
13 in this case more often than you communicate with your two
14 named clients, Mr. Camacho and Mr. Piaguaaje?

15 A. Yes.

16 Q. Am I also correct you communicate with Mr. Donziger about
17 what is going on in this case?

18 A. Yes.

19 Q. Is it Mr. Fajardo who signed your retention agreement?

20 A. As did Mr. Piaguaaje.

21 Q. Who would be the person who would have the ability to fire
22 you if you were to no longer be retained on the case?

23 A. I assume Mr. Fajardo would have that power. I assume my
24 client would have that power.

25 Q. Was Mr. Donziger the person responsible for your firms

D4HJCHE3

Smyser - direct

1 hiring in the first place?

2 A. Mr. Donziger was one of the persons we spoke to about the
3 case before we were hired.

4 Q. Who else did you speak to before you were hired?

5 A. Mr. Fajardo and Mr. Yanza.

6 Q. Would those three persons, Mr. Donziger, Mr. Fajardo and
7 Yanza, would those also be the persons who would decide whether
8 you would continue on the case?

9 A. I do not believe Mr. Donziger has any role whether we
10 continue in the case.

11 Q. You believe that would be Mr. Fajardo?

12 A. As I understand it, I think Mr. Fajardo has the pertinent
13 power of attorney, and my client.

14 Q. So when Mr. Fajardo refuses one of your requests, your
15 request is being refused by a person who you believe has the
16 authority to fire you?

17 A. I think he might. I have never thought of it before, but I
18 think he might.

19 Q. Am I also correct that you represent all 47 of the LAPs in
20 the other related U.S. proceedings?

21 A. It is my understanding there is one other related
22 proceeding we represent.

23 Q. You represent all 47 LAPs in that case, correct?

24 A. Yes.

25 Q. When the motion to compel production of the Ecuadorian

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Smyser - direct

documents was granted, did you make any attempt to communicate with any of the 47 LAPs, Camacho, Piaguaje, any of the others about consenting to production of the Ecuadorian documents?

A. Yes.

Q. Which one?

A. We spoke to our clients.

Q. Which clients, sir?

A. Mr. Piaguaje and Mr. Camacho.

Q. You spoke to both of them after Judge Kaplan's February 13, 2013 order about whether they consented to producing the Ecuadorian lawyer's documents?

A. We spoke to them about Mr. Kaplan, Judge Kaplan's order --

Q. Did you ask --

THE COURT: Let him finish.

MR. MASTRO: Certainly, your Honor.

A. -- that we were required to produce these documents. That included documents from other of the 47 clients.

BY MR. MASTRO:

Q. Did you ask either Mr. Camacho or Mr. Piaguaje to demand of Mr. Fajardo that the Ecuadorian lawyer's documents be produced in response to Judge Kaplan's February 13, 2013 order granting our motion to compel?

A. I don't recall the exact formulation of the words I used with Mr. Camacho and Mr. Piaguaje. I know we informed them of the court's order. We had the court's order translated. We

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Smyser - direct

1 discussed the order with them.

2 Q. To your knowledge, neither of them did make such a demand
3 of Mr. Fajardo, correct, sir?

4 A. To my knowledge, they made a demand through us to
5 Mr. Fajardo.

6 Q. They did not personally make a demand of Mr. Fajardo,
7 correct?

8 A. I have no idea whether they did or not.

9 Q. Did they demand of you that you make such a demand?

10 A. I don't recall that.

11 MR. MASTRO: Your Honor, the remainder of my line of
12 questioning is on the subject of the suggestion by Mr. Smyser
13 of bringing a suit in Ecuador and then the subsequent history.

14 THE COURT: Which is awaiting the other side's papers
15 this evening.

16 MR. MASTRO: Correct, your Honor.

17 THE COURT: And a ruling.

18 MR. KEKER: Could I make a suggestion to hopefully
19 move things along. I understand -- Mr. Smyser can correct
20 me -- these documents are available for your review and maybe
21 after lunch or sometime we can finish this today if he is the
22 last witness, you look at the documents, you make a decision
23 about what is going to happen, and if Mr. Stewart or Mr. Smyser
24 needs to testify further about them, whatever, we can do it
25 today rather than come back tomorrow if that meets with the

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1 court's approval. There are not that many, I don't think.

2 THE COURT: I thought I understood not two hours ago
3 from Mr. Smyser that some of them are in Texas.

4 MR. KEKER: They are, but now because of the miracles
5 of the digital age, they're in this courtroom because I have a
6 laptop, thanks to your -- not laptop, but an iPad and that
7 digits are going around, electronic data, and here they are.

8 THE COURT: So you got them over s wireless
9 connection?

10 MR. KEKER: I got them over a wireless connection so
11 that they could review --

12 THE COURT: Mr. Keker, you know I signed an order
13 consistent with the standing orders of this Court based on an
14 application to bring that laptop in --

15 MR. KEKER: iPad.

16 THE COURT: -- which certified that any wireless
17 capability was disabled.

18 MR. KEKER: Well, then that was my mistake, your
19 Honor. I didn't realize that.

20 THE COURT: Let's not have it happen again.

21 MR. KEKER: Yes, sir.

22 THE COURT: The security around here is not something
23 we take lightly, especially this week.

24 MR. KEKER: I should say. I will disable it this
25 second.

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Smyser - direct

1 THE COURT: All right.

2 MR. KEKER: I am sorry.

3 THE COURT: What about the proposal, Mr. Mastro?

4 MR. MASTRO: Your Honor, I am fine with that proposal.

5 If your Honor is going to rule today on those
6 documents, assuming they're limited in number, there is also
7 the document Mr. Donziger is producing.

8 THE COURT: Yes, I have looked at that. I am prepared
9 to allow it to be produced in a redacted form, albeit not in
10 exactly the redacted form Mr. Keker asked.

11 Mr. Keker, you can follow along. Nobody else can, but
12 you have the document.

13 MR. KEKER: Right.

14 THE COURT: I am working only from the translation, so
15 this would have to be extended to cover the Spanish part of it.

16 On the page that is headed "Translation," I would
17 leave the first two lines, that is, the word "Translation" and
18 what comes after it and nothing else. You could redact the
19 red.

20 MR. KEKER: February and greetings, just to make sure
21 I got it right?

22 THE COURT: February 11, that line that starts
23 February 11. The following page I would permit you to redact.
24 On the page after that, I would allow redaction of the first
25 four paragraphs.

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Smyser - direct

1 MR. KEKER: The first full -- they're all full.

2 THE COURT: Yes, and the very last paragraph that has
3 the letter F in front of it.

4 MR. KEKER: What we provide is under changes A through
5 E?

6 THE COURT: Correct, and on the last page, I would
7 allow you to redact G, if you wish to do so, Paragraph 3. I
8 didn't understand that to be within your request.

9 MR. KEKER: We'll decide. I will prepare such a
10 document, your Honor.

11 THE COURT: All right. Then you can show it to me.

12 Now the one you have handed up I will mark Court
13 Exhibit A and file it under seal.

14 MR. KEKER: We are going to have to -- we'll cut this
15 up. I don't have the ability to make a good --

16 THE COURT: I can get my staff to do it for you and
17 show it to you.

18 MR. KEKER: That would be most helpful.

19 THE COURT: We'll do that. Andy, this one marked
20 Court Exhibit A, but leave all the sticky papers for the
21 moment. Now, does anyone want a cross of Mr. Smyser thus far
22 or do you want to wait with that?

23 MR. VESELKA: I prefer to wait until the completion of
24 his testimony.

25 THE COURT: Today is Wednesday. We can plan to sit

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Smyser - direct

1 this afternoon. How fast can you get these other documents to
2 me?

3 MR. VESELKA: Within 15 minutes.

4 THE COURT: All right, get them to my Chambers. We'll
5 adjourn until 2:00 o'clock and see whether we can't finish.

6 I take it that implicit in everything that has been
7 said is that once we're through with Mr. Smyser and Mr.
8 Stewart, that's it, the hearing is over. Is that correct?

9 MR. KEKER: Yes, your Honor, unless you want argument.
10 I can take a wild guess that you don't.

11 THE COURT: That would be right. If there is one
12 thing this case is long on, it is argument.

13 MR. VESELKA: I would have to confirm just because we
14 didn't know we were getting here this fast, but I assume that
15 that would be it.

16 MR. SMYSER: Yes.

17 THE COURT: So you have just had it confirmed. Then
18 we'll break until 2:00 o'clock, and assuming I get these papers
19 on time and that it is not voluminous, maybe we can resolve the
20 whole thing.

21 MR. MASTRO: That would be our aim, your Honor. Just
22 one last thing. I haven't seen the Donziger document. They
23 will give it to me, I assume, over the lunch break redacted.
24 Depending on what it says, whether I need to ask him any
25 questions.

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Smyser - direct

1 THE COURT: I understand that.

2 MR. SMYSER: May I make one more point while you
3 consider the e-mails?

4 THE COURT: Yes.

5 MR. SMYSER: I believe the disclosures we made are
6 consistent with the case law that says if they're the kind of
7 disclosures that are made in connection with a privilege log,
8 that those don't constitute a waiver. This is on the waiver
9 argument.

10 THE COURT: All right. Thank you.

11 (Luncheon recess)

12 (Continued on next page)

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Smyser - direct

1 AFTERNOON SESSION

2 2:00 pm

3 (Hearing resumes)

4 (In open court)

5 THE COURT: Good afternoon, everyone.

6 Let's see whether we can deal with these documents.

7 First of all, with respect to Court Exhibit A, I have
8 asked my law clerk to prepare -- and I will ask her to give it
9 to Mr. Keker, first of all -- what seemed to me to be the
10 appropriate redaction which I have described previously. I had
11 not then focused on the cover page to the Spanish version, but
12 in any case, there you have it, Mr. Keker.

13 If there is nothing further to be said on that, we'll
14 give it to everybody else.

15 MR. KEKER: It looks exactly right, your Honor, to me.

16 THE COURT: Okay.

17 MR. KEKER: The fact that I am not objecting to Steven
18 Donziger to me, Ms. Little and Mr. Werdegarr, I think that is
19 attorney-client privilege, but as long as it is --

20 THE COURT: You're talking about the cover e-mail from
21 Jan Little?

22 MR. KEKER: From Donziger to Keker, Little and
23 Werdegarr.

24 THE COURT: The one that says, "Pablo sent this
25 message to the American legal team this morning," that is

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Smyser - direct

1 privileged?

2 MR. KEKER: That is covered by attorney-client
3 privilege, but as long as it is not a waiver, I don't care.

4 THE COURT: I don't think it is covered by
5 attorney-client privilege. So there you are. My law clerk
6 will distribute the redacted versions to counsel. That takes
7 care of that.

8 Secondly, I received -- I am informed from Mr.
9 Smyser -- over the lunch hour a packet of e-mails to which
10 there was reference earlier. We'll mark those collectively
11 Court Exhibit B. Shawn, that packet originally included, did
12 it not, the October 9th e-mails? And they're in here or not?

13 (Off-the-record discussion)

14 THE COURT: That packet will be Court Exhibit B. Now,
15 they're all in Spanish. I am not a Spanish-speaker. With the
16 assistance of my law clerk, I have been through the two October
17 9th e-mails. Independent of their contents, my ruling is that
18 if there ever was any privilege with respect to those two
19 e-mails, it was waived by the defendant's references to it in
20 their papers, as Chevron has contended. So those two e-mails
21 are to be produced.

22 MR. SMYSER: Yes, your Honor, we understand that. As
23 Mr. Kecker said, that is a ruling overruling our objection to
24 producing those documents?

25 THE COURT: Yes, it is. Now, as to the rest of them,

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Smyser - direct

1 I can't read them, so I am simply going to ask you to provide
2 me with translations. If this is still an issue, then we are
3 going to be back tomorrow. If it is not going to be an issue,
4 then it is not going to be an issue.

5 What is your pleasure?

6 MR. SMYSER: Mr. Stewart, who is the author of the
7 e-mails, can translate them for the court immediately if the
8 court would so desire.

9 THE COURT: I don't think it is appropriate for -- you
10 are proposing that be done ex-parte?

11 MR. SMYSER: I am proposing he sit here and do it
12 right this second, translate them and provide the translation
13 to the court.

14 MR. VESELKA: In writing.

15 MR. MASTRO: We have a court translator here in the
16 courtroom to be able to assist your Honor with that.

17 THE COURT: If somebody wants to provide me with
18 written translation, fine.

19 MR. MASTRO: I would propose that that translator, who
20 both sides have used in the case, translate the documents so
21 that your Honor can review them and maybe we can complete
22 today.

23 MR. KEKER: This is short enough, could the court
24 translator go into Chambers with you and read you the documents
25 so you know what is in them? That would be fine with us.

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Smyser - direct

1 MR. MASTRO: I will need a translation, your Honor,
2 because I will then, if your Honor were to rule they are
3 produced, I can question.

4 MR. KEKER: If you produce them, Mr. Jarod can say
5 what they said to Mr. Mastro. It is not that complicated.

6 MR. MASTRO: That would greatly constrain my
7 examination.

8 THE COURT: Look, isn't the practical way of handling
9 this for the three of you to agree that the interpreter of your
10 choice will read them to the three of you on a without waiver
11 basis, and then you can come back and tell me whether anybody
12 cares about this any further?

13 MR. MASTRO: That will be fine by me, your Honor.

14 MR. SMYSER: Let me confer.

15 (Off-the-record discussion)

16 MR. KEKER: I'll do anything I can do to get back to
17 California, your Honor.

18 THE COURT: I picked that up a long time ago this
19 morning, Mr. Keker.

20 MR. SMYSER: Assuming these are provided under
21 protection of 502, Rule 502, where we are providing them to
22 them, they're going to read them with the translator, all three
23 of us, and if they decide they want to do something further
24 with them, then we submit them to the court if we can't reach
25 an agreement on them.

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Smyser - direct

1 THE COURT: Is that acceptable to you, Mr. Mastro?

2 MR. MASTRO: Yes, your Honor.

3 THE COURT: Mr. Keker?

4 MR. KEKER: Yes, your Honor.

5 THE COURT: Then have at it. Let's mark these Court
6 Exhibit B, and let Andy know when you're ready.

7 (Recess)

8 (Continued on next page)

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Smyser - direct

1 (Time noted at 3:40 p.m.)

2 THE COURT: What is taking so long?

3 MR. SMYSER: Your Honor, the e-mails have been
4 translated with Mr. Mastro -- counsel for both sides. They are
5 now -- the translations are now being typed up. It has turned
6 out to be difficult to transpose the translations to a thumb
7 drive to get them printed so that the Court can review them,
8 and the difficulty is a technical one that we hope to resolve
9 in the next 15 minutes or so.

10 THE COURT: Is any of this truly necessary?

11 MR. MASTRO: Yes, your Honor, because at least three
12 of the trails -- and they each have several e-mails on them --
13 we think are going to be very relevant to this hearing and what
14 transpired in the Cordova case. So --

15 THE COURT: Give me a preview, please. I mean, you've
16 seen the translations, I have not.

17 MR. MASTRO: Yes. I think we should do it at the
18 sidebar, if that is OK, your Honor.

19 THE COURT: Yes. Sure.

20 (At the sidebar)

21 MR. MASTRO: Your Honor got a rough translation of the
22 chain on October 9th. And since your Honor has ordered
23 production, that chain goes to -- we believe directly
24 contradicts the declarations of the testimony that has been
25 given about --

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Smyser - direct

1 THE COURT: The October 9 chain?

2 MR. MASTRO: The October 9th. It was a direction to
3 file an action to get an order to bar production. That's --
4 "prohibition," that's the word used in it, to get an order to
5 prohibit, bring a dec. action to get an order to prohibit the
6 production is what it says, a dec. action to define the rights
7 of the parties, as the affiants have said.

8 THE COURT: As the what said?

9 MR. MASTRO: As the two declarants, Mr. Smyser and
10 Mr. Stewart, have said, using similar language about bring an
11 action to get a declaration of the rights and responsibilities
12 of the parties and document production under Ecuadorian law.

13 Mr. Stewart -- and, also, that they didn't know what
14 the status was. Mr. Fajardo said he would keep them apprised,
15 but they didn't know what the status was in Ecuador.

16 Well, actually the chain is send me Judge Kaplan's
17 order right away, thinking an order had already been entered
18 that they had to produce the documents and Jarod Stewart
19 responding with the status here, that the order hadn't actually
20 been entered yet, but if you could get that declarative action
21 on file, one that seeks to prohibit the production.

22 He then goes on to say, incredibly, we -- we would
23 bring that to your attention that there is such an action
24 pending to define Ecuadorian law. Somehow that fell out of the
25 equation later completely. And they never mentioned that in

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Smyser - direct

1 any of their declarations or have it in any of their testimony
2 today.

3 Then on October 22nd, I will describe what I
4 understand to be the import. On the 22nd, Mr. Stewart has
5 follow-up exchanges with Mr. Fajardo finding on what the status
6 is, and here they are saying they didn't know an action had
7 been brought. They ask no questions about an action. The
8 response that comes back is that it is moving forward, the
9 language suggesting you knew it had already been filed. It is
10 moving forward, not that we just filed it.

11 THE COURT: All right. So get this translation --

12 MR. MASTRO: And then --

13 THE COURT: I'm sure you disagree with some of this.

14 MR. SMYSER: With virtually everything he said, your
15 Honor.

16 THE COURT: I'm sure you do.

17 MR. SMYSER: This is like listening to --

18 THE COURT: I'm sure you do, but I'm not going to
19 decide this here, I am going to wait, and I'll see the
20 translations, and if there is further testimony, there will be
21 further testimony.

22 MR. MASTRO: That is right, your Honor --

23 THE COURT: I just want to understand what the point
24 of this is.

25 MR. SMYSER: There is no point to this dispute at all.

D4hdche4

Smyser - direct

1 MR. MASTRO: Your Honor, there is at lease one other
2 chain on January 1. There are other January chains, too. On
3 January 1, where Mr. Stewart and Mr. Fajardo have an exchange
4 about the status, and, you know, it's a very clear and
5 unequivocal statement that how important it would be to get an
6 order barring production, that that's what this is about.

7 So I think those --

8 THE COURT: Who is the speaker, you say?

9 MR. MASTRO: Hold on a second.

10 THE COURT: Who makes that statement, you say?

11 MR. MASTRO: Mr. Stewart says, to Mr. Fajardo, we know
12 that you are doing everything possible to obtain a declaration
13 to that effect.

14 MR. SMYSER: What kind of declaration to what effect?
15 You are putting --

16 THE COURT: Look, we are not going to argue the facts
17 here. All I did was ask what's taking so long and whether this
18 was worth it. Mr. Mastro seems to think it is worth it, so I
19 will wait and we will get the translations and if there is need
20 for more testimony, we will see.

21 MR. KEKER: So come back tomorrow?

22 THE COURT: Well, is that what you prefer?

23 MR. KEKER: No. I prefer to stay and do it, but it
24 sounds -- I don't know how long it is going to take and what
25 your schedule is.

D4hdche4

Smyser - direct

1 THE COURT: Let me --

2 MR. KEKER: We would prefer to finish it today.

3 MR. MASTRO: Your Honor, as I mentioned to your
4 courtroom deputy, while I would prefer to finish tonight, I
5 teach at the University of Pennsylvania Law School on Wednesday
6 nights, so I take the end-of-the-day Acela and get down there
7 and teach my class at night. So if we went past 5 I would miss
8 my train tonight. So that would be a problem but I, of
9 course --

10 THE COURT: If you miss your train, what happens?

11 MR. MASTRO: It means that I will be an hour late for
12 my class, which is, you know, two hours --

13 THE COURT: Your constraints, Mr. Kekker, are what?

14 MR. KEKER: I don't have constraints. I was planning
15 to stay as long as you were making us this week. I can't be
16 here next week.

17 MR. MASTRO: We can finish tomorrow.

18 THE COURT: How long is this?

19 MR. MASTRO: Your Honor, we will finish tomorrow, I
20 promise you. We will finish tomorrow.

21 THE COURT: By lunchtime?

22 MR. MASTRO: By lunchtime.

23 THE COURT: All right. Well, OK, fine. You will get
24 me the translations as soon as you can, and we are adjourned
25 until 9:30.

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Smyser - direct

1 MR. SMYSER: Your Honor, here is how we are doing the
2 translations to try to speed it up. Instead of translating the
3 entire e-mail to/from, all of that sort of stuff, which is
4 fairly obvious, we are translating the text of the e-mail, and
5 then the text will be affixed to the to and from so that the
6 Court will have that frame. The idea is to get the Court the
7 text as rapidly as possible.

8 THE COURT: Whatever is acceptable for present
9 purposes to you people I will cope with in that respect. And
10 then if these things do come in, then we will want to get the
11 proper form, the full translation. All right?

12 MR. MASTRO: Thank you very much, your Honor.

13 THE COURT: Does that satisfy everybody.

14 MR. SMYSER: Mm-hmm.

15 THE COURT: Mr. Keker, I am in very much sympathy with
16 you, having waited every Friday, years back, to find out
17 whether the judge was going to adjourn my trial in Los Angeles
18 in time for me to get on a plane to New York.

19 MR. KEKER: Isn't it awful? I know that feeling.

20 THE COURT: Total sympathy.

21 MR. KEKER: Thank you, your Honor.

22 MR. MASTRO: Thank you.

23 (Adjourned to 9:30 a.m., Thursday, April 18, 2013)
24
25

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